

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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:  
DONALD HESS and ELIZABETH PADILLA, :  
individually and on behalf of all others similarly situated, : 1:21-cv-04099(AT)(RWL)  
:  
Plaintiffs, :  
:  
-against- :  
:  
BED BATH & BEYOND INC., :  
:  
Defendant. :  
:  
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**NOTICE OF  
MOTION TO DISMISS**

**PLEASE TAKE NOTICE**, that Defendant Bed Bath & Beyond Inc., (“Bed Bath & Beyond”) relying upon the accompanying Memorandum of Law, Declaration of Jeffrey H. Ruzal, Esq. and the exhibits annexed thereto, and all of the pleadings and proceedings had herein, through their counsel, Epstein Becker & Green, P.C., will move this Court, before the Honorable Robert W. Lehrburger, United States Magistrate Judge for the Southern District of New York, at 500 Pearl St, New York, New York 10007, for an order, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure, dismissing the Third Amended Complaint.<sup>1</sup>

**PLEASE TAKE FURTHER NOTICE** that pursuant to the order of Judge Lehrburger issued on July 19, 2022 (ECF No. 97), opposing papers, if any, are due on September 2, 2022, and reply papers, if any, are due on September 16, 2022.

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<sup>1</sup> As explained in greater detail in BBB’s Memorandum of Law, BBB withdraws its opposition to Plaintiffs’ request for leave to file their Third Amended Complaint. As such, it assumes that Plaintiffs will be allowed to file their Third Amended Complaint and now moves to dismiss it. In the event the Court does not permit Plaintiffs to file the Third Amended Complaint and requires further briefing on whether Plaintiffs may do so, BBB respectfully requests that the Court dismiss the operative complaint (i.e., Plaintiffs’ Second Amended Complaint) and deny Plaintiffs leave to amend for the reasons set forth in BBB’s accompanying memorandum.

**WHEREFORE**, BBB respectfully requests that the Court grant its Motion to Dismiss the Third Amended Complaint and grant it any other relief the Court deems to be just and proper.

New York, New York  
August 12, 2022

EPSTEIN BECKER & GREEN, P.C.

By: */s/ Jeffrey H. Ruzal*

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